IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

RCRev..No. 88 of 2003(C)

RCA.6/1999 RENT CONTROL APPELLATE AUTHORITY,KOLLAM.
RCP.41/1996 PRL.RENT CONTROLLER, KOLLAM.
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REVISION PETITIONER/APPELLANT/PETITIONER:

DR. V.K. KARUNAKARAN, SIMILA L-4-14,
THEVALLY NAGAR, THEVALLY, KOLLAM.

BY ADV. SRI.K.SUBASH CHANDRA BOSE.

RESPONDENTS/RESPONDENTS/COUNTER PETITIONERS:
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1. **A.A. NAZAR, RESIDING AT AZAD MANZIL,**
   THIRUMALA ROAD, THIRUVANANTHAPURAM.

2. **A.A. ANZARI, RESIDING AT DO.**

3. **RAHIYA BEEVI RAHIYANATH BEEVI,**
   RESIDING AT DO.

4. **RAHIYA BEEVI RAMLA BEEVI,**
   RESIDING IN DO.

5. **RAHIYA BEEVI JAMEELA BEEVI,**
   RESIDING IN DO.

6. **RAHIYA BEEVI UMAIBA BEEVI, R/AT DO.**

R.C.R. NO. 88/2003:

7. S. HABSA BEEVI, RESIDING AT DO.

BY

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 29/06/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 88 of 2003

ORDER

Balachandran, J.

The petitioner in R.C.P.No.41/96 on the file of the Rent Control Court, Kollam is the revision petitioner. He challenges in this revision the order passed concurrently by the Rent Control Court and the appellate authority holding that he is not entitled to an order restoring him in possession of the scheduled property under Section 11(12) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). Respondents are the landlords. The petitioner was evicted from the scheduled building on 30.7.1995, after fighting a protracted litigation from 1980 onwards. R.C.P. No.90/80 filed against him was fought out by him upto the Honourable Supreme Court and thereafter he surrendered the scheduled building to the respondents/landlords through court on 30.7.1995.

It is his case that the scheduled building was got vacated under Section 11(3) of the Act and the landlords have not occupied the scheduled building either within one month or ever thereafter till the filing of R.C.P.No.41/96 by him on 12.12.1996. The petition was resisted by the landlords.

2. It is seen from the order passed by the Rent Control Court that eviction was ordered under Sections 11(3) and 11(8) of the Act and that was concurrently upheld by all the courts and finally, stamp of approval was granted even by the Apex Court granting the petitioner six months time to surrender vacant possession of the scheduled building. It was accordingly that he surrendered the scheduled building through court on 30.7.1995. The case of the petitioner was that despite expiry of sixteen months from the date of surrender of the scheduled building, the building has not been put to use by the respondents/landlords. According to the respondents, they have put the scheduled

building to use for expanding the hotel business run in the name and style 'Azad Hotel'.

3. Considering the evidence adduced at the trial and Exhibit C1 commission report obtained through the Commissioner, the Rent Control Court came to the conclusion that the scheduled building is occupied by the respondents for the purpose of expanding the hotel using the scheduled building also for additional accommodation. The Rent Control Court observed that ever after delivery of the building to the respondents, the petitioner has not entered into the scheduled building and that he has only hearsay information that the scheduled building is not occupied for the purpose of additional accommodation for the hotel run by the respondents. The Commissioner, deputed by the Rent Control Court, also found that the scheduled building has been repaired and modified and formed as part of the Azad Hotel run by the respondents. The Rent Control Court also observed that the

petition for restoration under Section 11(12) of the Act was filed only after sixteen months of delivery of the building to the respondents, when on the allegations in the RCP, the right to move a petition for restoration of possession had accrued to him on the expiry of one month from the date of eviction, i.e. on 30.8.1995, if at all eviction is considered as having been ordered under Section 11 (3) of the Act alone. In cross-examination, the petitioner, as PW1, deposed that he has no reasonable cause whatsoever for not filing an application within one month of arising of the cause of action. Section 11(13) of the Act suggests that the right of the tenant to apply for possession under Section 11(12) of the Act has to be exercised within one month of arising of the cause of action. The Rent Control Court for that reason found that there is no bona fides in the claim; that the claim for restoration is advanced far out of time and that in any event, eviction

having been ordered also under Section 11(8) of the Act, the petitioner is not entitled to have restoration of possession, resorting to Section 11 (12) of the Act. Accordingly, the Rent Controller dismissed R.C.P.No.41/96. R.C.A.No.6/99 filed by the petitioner was dismissed by the appellate authority, concurring with the findings of the Rent Control Court.

4. On going through the orders of the authorities below, we are unable to find any illegality, impropriety or irregularity in the appreciation of the evidence in the case by the authorities below. The findings entered into concurrently by the authorities below are based on sound appreciation of evidence and legally also dismissal of the petition filed by the petitioners before the Rent Control Court concurrently by the authorities below is correct and proper. It is also to be pointed out that in this revision filed as early as on 14.6.2003, the petitioner has not

taken steps to complete service on the respondents. There is absolutely no merit in this revision filed obviously to harass the respondents.

This revision, in the circumstances, is dismissed.

(J.B.Koshy, Judge)

29th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 88 of 2003

ORDER

29th June, 2007